

Contested Accountability Logics in Evolving Nonstate Certification for Fisheries Sustainability

*Lars H. Gulbrandsen and Graeme Auld**

Abstract

The rise of transnational nonstate certification programs has contributed to complex accountability relations surrounding efforts to hold companies accountable for their environmental and social impacts. Using the analytical lenses of internal and external accountability, we examine the Marine Stewardship Council (MSC)—a fisheries certification program—to assess how its decisions about goals, engagement of stakeholders, and accountability mechanisms have affected the controversies facing the program and how it has sought to address them. We reveal a misalignment between environmental groups and the MSC. Both seek to advance sustainable fisheries, and the market campaigns of environmental groups have supported certification. However, the MSC has provided these groups limited influence over its governance; it has responded to external demands for accountability by focusing on internal accountability, and reforming its assessment and objection procedures. Environmental groups have responded by working to decouple their campaigns from supporting the MSC. Tracing the consequences of this misalignment therefore highlights the need to assess rival processes such as market and information campaigns to understand attempts to hold nonstate certification programs to account.

Transnational nonstate certification programs—a form of private governance—set standards for responsible business practices against which businesses may be audited to verify compliance. Environmental groups have supported certification in the hopes of holding companies responsible for the environmental and social consequences of their operations. Using “naming-and-shaming” campaigns to target companies near to end-consumer markets—like supermarkets and retailers—these groups have engendered demand for certification. The environmental purchasing commitments made by these targeted companies have helped expand uptake of certification through global supply chains.

* We contributed as equal lead authors. We thank Susan Park and Teresa Kramarz for extensive and useful feedback on earlier versions of this paper. Discussant Matthew Hoffmann and other participants of the Accountability in Global Environmental Governance workshop at the International Studies Association meeting held in New Orleans in February 2015 also provided helpful comments. We also are grateful for the helpful suggestions offered by Kate MacDonald and the three anonymous referees.

This pattern, however, complicates the accountability relations of nonstate certification. Certification programs, and their accredited auditors, serve as an accountability mechanism for those buyers that seek assurances that their suppliers are meeting environmental standards. However, the demand for these assurances in large part flows from the campaigning pressures of environmental groups. These buyers and environmental groups, moreover, claim to advance consumer and citizen interests, respectively—with businesses trying to assuage consumer disquiet about the environmental and social practices of a company's supply chain, and environmental groups claiming to champion the broader public interest of environmental conservation. All told, the relationships among the certification program, accredited auditors, environmental and social groups, and the users and targets of a program's rules—as well as governments, the general public, and other stakeholders—are rarely straightforward.

How do these complex relationships affect how, to whom, and against what norms certification programs are held accountable? We argue that central to this complexity are the vague and evolving boundaries that delineate a certification program's external community; the character of such a community is significant for how accountability functions with nonstate certification programs. Following organizational scholars (Oliver 1991) and principal agent theory (Mattli and Büthe 2005), we highlight that a multiplicity of stakeholder demands (all vying principals) creates strategic opportunities for a certification program (the agent) to choose the normative ends it aims to advance, the calls for accountability it needs to address, and how to address them. Hence, when the boundaries of a certification's global community are unclear, calls for more or deeper stakeholder participation (e.g., Bäckstrand 2008; Abbott and Snidal 2009) are unlikely to lessen the contested politics of accountability surrounding these evolving governance institutions.

To detail this argument, we examine the Marine Stewardship Council (MSC)—an initiative that sets standards for certifying responsible capture fisheries. As evolving governance institutions, we argue that programs like the MSC face three accountability-related decisions on an ongoing basis—*what goals* (or normative principles) will the program advance, *who* will have access to influence the program's decisions, and *what accountability mechanisms* it should adopt to signal the credibility of its intent to reach its goals. The accountability mechanisms align with two logics (cf. Keohane 2003)—an internal logic to ensure that participating producers comply with the program's requirements; and an external logic in which the program responds to the competing demands of environmental groups, businesses, governments, and public(s) for accountability against varied normative principles.

The MSC reveals the logics of internal and external accountability, as well as the contestation between these two, as the program has defined its goals and determined which actors can influence its internal governance processes. We observe a fundamental misalignment because the MSC claims to advance fisheries sustainability but has given limited access to environmental groups that

also intend to advance this normative end. The salience of this misalignment is heightened by the demand-generating role that environmental groups play for the MSC. Aligning with the logic of internal accountability, the program has attempted to address varied critiques voiced by its external stakeholders by strengthening its assessment and objections procedures. All the while, some environmental groups have decoupled their campaigns from directly supporting the MSC, to minimize the MSC's potential negative impacts on their other actions for advancing sustainable fisheries. In this way, they may deprive the MSC of a key resource—demand for the program's services—in an attempt to underscore why the MSC ought to be accountable to their concerns. Hence, to understand the MSC's accountability relations, we need to consider rival processes like market and information campaigns, which can serve as external attempts to hold the MSC to account.

Accountability in Nonstate Certification

Global governance faces an accountability deficit when measured against liberal democratic norms and associated mechanisms of accountability. This deficit also applies both to intergovernmental organizations and transnational governance schemes like nonstate certification (Rosenau 2000, 192; Grant and Keohane 2005).

Given this shortcoming, and recognizing the dramatic rise in transnational "new" governance, attention has turned to other accountability mechanisms. Certain scholars argue that wide representation of stakeholders is a precondition for accountable transnational governance (Bäckstrand 2008). Others note the great diversity among modes of representation and emphasize the importance of understanding the consequences of degrees of "stakeholderiness" (Fransen and Kolk 2007; Abbott and Snidal 2009). According to these scholars, more needs to be understood about how private governors make decisions about stakeholder engagement and how these decisions affect the governors' activities and broader efforts to hold different actors responsible for environmental and social harms.

The participation of environmental groups can be critical for nonstate certification programs (Cashore 2002); relations with these groups provide a newly formed program with legitimacy by association. Other actors—particularly auditors, businesses, and funders—provide additional symbolic and material resources to new certification initiatives to legitimate their role as global governors (Cashore et al 2004; Boström 2006). A key question then, is how these relations vary over time as a certification program develops its own basis of legitimacy and hence gains autonomy from its initial, and potentially varied, principals. As others have noted (Mattli and Büthe 2005; Oliver 1991), multi-stakeholder relations can provide an organization with more decision-making flexibility; a multiplicity of demands allows the organization to perform selective accommodations, addressing those concerns that are in its own interest to address while ignoring

more challenging stakeholder demands. Hence, to understand accountability relations for nonstate certification, we need to understand how different stakeholder relations, and the differing power relations these involve, matter.

We advance this form of analysis by focusing on the distinction between internal and external accountability (Keohane 2003). These respective forms of accountability have their own logics, understood as theories for how particular substantive and procedural rules lead to certain ends (Auld et al. 2015). The *logic of internal accountability* rests on the idea that institutionalized relations between producers and certifiers, between certifiers and accreditation organizations, and among a program's governance bodies like its board, secretariat, and technical or stakeholder committees are critical. Rules governing these internal relations are a means for achieving environmental and social outcomes, and for ensuring that the program is a credible and reputable governor. Indeed, the logic of internal accountability is based on Weberian ideas of technocratic effectiveness—sometimes termed bureaucratic accountability systems (Romzek and Dubnick 1987)—which are reinforced through procedural norms promulgated by the International Organization for Standardization. Most certification programs delegate auditing to independent certifiers that are typically accredited by and answerable to accreditation bodies, which in turn are accountable to the certification programs. The certifiers issue certificates to producers that comply with the standards, audit performance through regular inspections, and may penalize noncompliant producers by suspending their certificates. Although participation is voluntary, producers must consent to regular inspections and accept the consequences of noncompliance. In these ways, producers are held accountable for their performance to the certifier, and ultimately to the certification program.

The *logic of external accountability*, by contrast, centers on the idea that enhancing responsiveness or answerability to markets and stakeholders *outside* the certification program is key for ensuring that a program accomplishes its goals (Gulbrandsen 2008). Moreover, such outside accountability is an end unto itself, in which stakeholder views ought to be considered and acted upon, not merely collected for instrumental purposes. Certification, and a program's label, serves as assurance for consumers, retailers, and other buyers seeking information about a product's social and environmental attributes. External accountability also aligns with democratic norms that those affected—directly or indirectly—by a program's activities ought to have influence over the program's decisions (Gulbrandsen 2008). Accountability thus involves both consumers' or retailers' right to *exit* to another provider and an option to *voice* concerns wherein they can ask questions and demand answers (Mulgan 2000, 586–589). Following this logic, certification programs and certified producers must recognize that they are answerable to external communities. Failure to do so may result in both material and symbolic losses of goodwill, credibility, and trust from the marketplace and relevant stakeholders.

The idea that a program is embedded within and reliant on some external community is central to the logic of external accountability. Some scholars have

suggested ideas for the boundaries of such communities and ways in which programs might become more legitimate. Bernstein and Cashore (2007), for instance, posit that the global supply chain targeted by a nonstate certification program serves as “lines on the map” that delineate a political community from which a program seeks legitimacy. Similarly, one can understand the basis for a governance program’s accountability as arising from social spaces denoted by a community’s boundaries (Kramarz and Park, this issue) wherein normative principles are inter-subjectively generated over time. Such ideas are consistent with the argument that stakeholder engagement is a precondition for accountable transnational governance (Bäckstrand 2008). However, while evidence exists that a community is forming around the work of nonstate certification (Bartley and Smith 2010), some researchers note the absence of certain ties (Fransen et al 2016) and persistent tensions between different organizing logics for private governance (Auld et al. 2015).

Moreover, the lines between the communities involved in internal and external accountability relations are often blurred. Büthe (2012) reminds us that actors may relate in several ways to a certification program: they may use a standard, be a stakeholder with interest in a program’s work, or be the target of the program’s rules. These internal–external boundaries also evolve, just as who has the right to vote in democratic states has changed over time. This is important, as delineating who is in and out affects the normative principles against which a certification program will be measured. Narrowly focusing on interests within the fisheries supply chain, for instance, may neglect global commons concerns arising about ocean systems. This problem is not unique to nonstate certification. Stakeholder processes run by governments make decisions about who has a legitimate interest in a process or set of decisions, and the boundaries can be hotly contested (Gibson 2012). Thus, it is useful to examine questions of how, to whom, and against what norms the MSC is held to account through the lens of the contested logics of internal and external accountability.

Accountability of the Evolving MSC

We examine the MSC’s evolving internal and external accountability relations by tracing three facets of the program’s history—the 2004 release of a commissioned review of the MSC (the Wildhavens report), the lead-up to the 2008 changes to the MSC’s assessment methodology, and the evolution of the program’s objections procedure. As context, we detail three accountability-relevant features of the program—governance as it relates to what actors have influence over the program, the program’s overall goals, and its standards and assessment process to elucidate internal accountability mechanisms.

The MSC began in 1996 as a partnership of the World Wide Fund for Nature (WWF) and the Unilever corporation. By 1999, it was an independent nonprofit organization governed by a board of trustees, with the assistance of a

secretariat (known as the MSC executive) that facilitated the program's work. The board was complemented by a standards council, national working groups, and an advisory board. The advisory board resembled a membership body with three chambers—one for those making a living from fisheries, one for governments and NGOs, and one for educational, social, and consumer interests. Following a governance review in 2001 (partly in response to concerns about limited stakeholder involvement in the program's governance), the standards council was replaced by a technical advisory board that was tasked with providing advice on standards, chain of custody, and logo licensing. The stakeholder council, which replaced the advisory board, was designed to represent broader stakeholder interests and provide guidance to the board of trustees. Two of its members were also to serve on the board. The stakeholder council still serves as the main process for stakeholder input for the MSC, with the board of trustees retaining final decision-making authority (Auld 2014, 192; Gulbrandsen 2010, 120).

The program's standard and assessment process have also engaged stakeholders. The program's fisheries standards—known as the MSC principles and criteria—were developed through a stakeholder consultation process between 1996 and 1999 (Fowler and Heap 2000, 140). Agreement was reached on three principles addressing the health of the target fish stocks, the ecosystem impacts of the fishery, and the performance of the fishery management regime; together they were meant to represent a standard for sustainable fisheries. A review of these standards took place in 2013 and 2014, and a new standard became operational in April 2015.

Accredited certification bodies conduct the MSC assessment process. These certifiers appoint expert assessment teams that evaluate if applicant fisheries meet the MSC standard. The team usually consists of a stock assessment expert, a fisheries biologist, and a fisheries management expert. Assessments are a transparent process in which stakeholder input is actively sought and evaluated, reports are open to stakeholder comments, and certifiers must demonstrate that consideration has been given to such comments in their final report. Importantly, in the original assessment procedure, the assessment team developed fishery-specific interpretations of the MSC principles and criteria. As we detail below, this changed with the new assessment methodology introduced in 2008.

The Wildhavens Report

In January 2004, the Wildhavens report was released as an assessment of the MSC's efforts to promote sustainable fisheries. It provided a vivid illustration of the blurred boundaries between the program's internal and external accountability relations. Commissioned by the Homeland Foundation, the Oak Foundation, and the Pew Charitable Trusts, the report focused on four case-study fisheries (two that had been certified and two undergoing assessments) of the

twenty fisheries under assessment or already certified. It also reviewed the performance of the MSC as a governance organization (Highleyman et al. 2004, i).

By interviewing forty-two stakeholders (individuals involved in MSC governance and external to it) and reviewing myriad documents, the Wildhavens report captured the concerns of external groups. These focused on limited stakeholder involvement in the program's governance and the purported failings of the MSC's internal accountability mechanisms for overseeing the certifiers' assessment work. All told, the report illuminated early instances where outside stakeholders (funders and environmental groups) used the MSC's purported goals as a benchmark to call for accountability and sought to contain what the MSC undertook to ensure it did not interfere with other attempts to advance sustainable fisheries.

As a new program, there was understandable confusion about to whom it was accountable. Indeed, one of the program's first initiatives—drafting standards—did widely engage external stakeholders with workshops held in various countries between 1996 and 1997 (Fowler and Heap 2000). While the Wildhavens report noted concerns about the MSC voiced during the discussions, it also supported the transparent, consensus-oriented nature of the standard-drafting process. This supportive tone was in contrast to how the report characterized MSC's governance problems. Invoking norms underlying the logic of external accountability, the authors' opined that "the Board in a consortium organization understands that its right to govern is premised on achieving the goals of its diverse stakeholders. A lack of accountability will alienate stakeholders and risks defusing a results-oriented culture (p. 16)." In other words, many external stakeholders felt the MSC ought to be accountable to their interests, and arguably the expectation that it would do so was reinforced by the broad participation in its standards-drafting work. Indeed, in an exchange among MSC critics and supporters, a WWF official involved in launching the MSC wrote a letter to readers of SAMUDRA (a periodical of the International Collective in Support of Fishworkers) responding to concerns about the program's potential negative impacts on small-scale fisheries and neglect for social development issues. The letter explained that stakeholders were critical and taken seriously by the MSC, and it urged groups to have "a voice in the governance and development of the MSC" (Sutton 1998).

Arguably, these urgings influenced stakeholder expectations about accountability as the first fisheries entered full assessments. They also reflected the MSC's early need to receive material and symbolic support from external stakeholders.

The MSC was sensitive to these comments (e.g., MSC 2004b), but appeasing competing interests was tricky, which arguably provided the program a growing level of autonomy. A point of debate was how the MSC ought to characterize the performance of certified fisheries. The Wildhavens report noted that many environmental groups opposed the use of the term sustainable; they felt it connoted an achieved state, not an aspiration. The MSC considered this issue during a joint meeting of the stakeholder council and the technical advisory board on May 27, 2004 (MSC 2004a). At the meeting, representatives of

retailers, processors, and fisheries supported retaining the term “sustainable,” seeing it as an aspirational goal; environmental groups disagreed, arguing that sustainability should be viewed as an end point (MSC 2004a). Meeting attendees, with the exception of one unnamed stakeholder council member, agreed that the MSC should retain the sustainable terminology but create a clearer public statement of what the term meant for the program (MSC 2004a).

Early controversy over the performance of certified fisheries further illustrates the uncertain and evolving internal–external boundaries and struggles among groups to hold the MSC to account. With the fisheries’ assessments, accountability relations were complicated by the procedural norm of independent audits, i.e., not performed by MSC. Certifiers initially had the discretion to translate the MSC principles and criteria into operational scoring for individual fisheries. This became problematic when stakeholders disagreed with the conclusions the certifiers drew about early applicant fisheries. Three of the four fisheries examined in the Wildhavens report were controversial: the New Zealand hoki fishery, the South Georgia toothfish fishery, and the Alaskan Eastern Bering Sea and Aleutian Islands pollock fishery (Alaskan pollock). Various groups appealed the certifications of these fisheries, but all certification decisions were upheld. As we will discuss, this signaled to many groups that outside strategies of accountability would be important. Indeed, environmental groups in these case-study fisheries worried that the MSC might curtail their other efforts to advance sustainable fisheries. For instance, Greenpeace targeted the Alaskan pollock fishery before the MSC audit and viewed an MSC endorsement as problematic, because it lessened the Greenpeace campaign’s bite. Moreover, Alaska Oceans Program, another environmental group concerned about the pollock fishery, ended its engagement with the MSC because the group felt the MSC had been insufficiently attentive to its concerns (Auld 2014).

The Alaskan pollock fishery also warned groups that the MSC might undermine government regulations. Part of the concern arose because existing US fisheries legislation provided environmental groups a certain degree of influence—particularly through the courts—over US fisheries management activities. The Wildhavens report noted that since 1998 environmental groups had successfully won four court cases against the US government claiming that the pollock fishery was not complying with the *Endangered Species Act* and the *National Environmental Policy Act*. The pollock case also followed debates over the reauthorization of the *Fisheries Conservation and Management Act*, which led to the 1996 *Magnuson-Stevens Act*, which required a ten-year plan for rebuilding stocks defined as overfished by an annual assessment of the National Marine Fisheries Service (Rosenberg et al. 2006). Although the new provisions did not address all the objectives of NGOs working on fisheries issues, there was a general sense that the new act was an improvement (Akhtar 1996). In other words, stakeholders not only felt the MSC limited their influence over its decisions, they also saw it as a potential form of greenwashing that distracted attention from legal noncompliance.

The Fisheries Assessment Methodology

Our next case—reforms to the fisheries assessment methodology—traces the MSC’s efforts to bolster its internal accountability mechanisms to assuage stakeholder demands. The Wildhavens report enumerated several problems with the assessment process. It called for improvements to transparency, stakeholder engagement, peer review, explanations for the reasoning behind assessment decisions, and interpretation guidance for the certifiers developed through a consensus-based process involving the technical advisory board (TAB) and the stakeholder council (Highleyman et al. 2004).

The MSC tackled these challenges through a larger reform process. On the assessment issue, the board of trustees provided renewed support to an ongoing project (the operational interpretation project) that was tackling the consistency and quality of assessments (MSC 2004b). This gathered momentum in 2005 with a joint project of the MSC executive and the TAB, which informed discussions at a June 2005 TAB meeting that reviewed the proposed work of the quality and consistency project (formerly the operational interpretation project) on, among other things, a new assessment tree and an operational interpretation of the standard (MSC 2005b).

In August 2005, the quality and consistency project released a rationale for its work, explaining that “the MSC has not provided CBs [certification bodies] with specific guidance requiring use of mandatory narrative or quantitative descriptions of the PIs [performance indicators] and SGs [scoring guideposts] that should be applied across fisheries... the MSC and its technical advisory board (TAB) realized that this circumstance creates the possibility for variable and inconsistent results in applying the standard with respect to the underlying intent of the Principles and Criteria” (MSC 2005a). As a corrective, the project emphasized four things. First, it intended to give MSC greater oversight over the certifiers, particularly during the assessment process. Second, it explained that the existing MSC standard lacked a sufficient narrative to guide certifiers as they developed assessment trees. Third, it saw its role as doing a house cleaning of the assessment-tree structures based on experience gained. Finally, the project recognized that certifiers needed better guidance on what “measurable performance indicators and benchmarks for scoring would improve quality and consistency of fisheries assessments” (MSC 2005a). In other words, it sought to reduce the discretion of the certifiers, bolstering the strength of the MSC’s internal accountability mechanism; whereas the certifiers had initially lent credibility to the program due to their pre-existing auditing expertise, the logic of internal accountability implied the need for greater oversight to ensure the MSC solidified its own reputation.

Notably, while the quality and consistency project received attention, the TAB also discussed the concerns of applicant fisheries about the varied, and often lengthy, assessment process. The TAB indicated it would investigate the matter (MSC 2005b), and International Policy Director Chris Grieve followed

up with a memo to stakeholders, certifiers, and fisheries indicating that assessment length was being considered and comments were welcome (Grieve 2005). As with the debates over the program's use of the term sustainable, the issue of assessment length highlighted that fisheries were concerned about the assessment process but for different reasons than NGOs (as captured in the Wildhavens report). Such competing interests complicate questions of to whom the MSC ought to be accountable and for what—in this case, inconsistent scoring with implications for *effectiveness*, or lengthy assessments with implications for *efficiency*.

These various interests became more central as the MSC initiated a process that engaged stakeholders on questions about changing the assessment methodology. The process' first phase involved five regional workshops in April and May of 2006 that heard from forty-eight individuals representing various interests; another forty-one people were invited to expert workshops (MSC 2006b). Many problems with the interpretation of the MSC standard were aired. General problems included the varied circumstances of fisheries, the need for consistency, and the best assessment methods given the high data variability and uncertainty for some fisheries (MSC 2006c).

The process led to a new fisheries assessment methodology that was implemented in July 2008 (MSC 2008). The MSC claimed the changes addressed applicants' need for quicker assessments and stakeholders' concerns about consistency (MSC 2009). However, the changes more clearly limited the certifiers' discretion. The default assessment tree and associated performance indicators became mandatory for all fisheries entering full assessment after July 28, 2008. Deviations were only permissible if an assessment team received written approval from the MSC's senior fisheries assessment manager (MSC 2008). In this way, the MSC responded to external pressure by exerting more control over the assessment process. This strategic reaction, moreover, illustrates how multiple stakeholder demands strengthened the MSC's position vis-à-vis the certifiers, in part reversing the power relation wherein the MSC had drawn on certifiers' expertise as an initial basis for its credibility and authority.

The Evolving Objections Procedure

Turning to our final case, opportunities to lodge complaints have been in place since the MSC launched, but a formal objections procedure was first introduced in 2001 and has since undergone several revisions. More than anywhere else, the lines between internal and external are clearly delineated: only stakeholders involved in or consulted during the assessment process may object to the certifier's decision. Even for those stakeholders, however, the costs and complexities of the objections procedure may constitute a barrier for using it to enhance internal accountability.

The first approach for complaints and dispute resolution gave the certifiers the role of specifying and implementing policy and procedures for handling

disputes. An unresolved dispute could then be referred to the MSC. The objection to the New Zealand hoki fishery was a critical early test for this approach. It exposed serious shortcomings, including that the approach lacked a time limit for submitting a complaint; guidance regarding the scope and handling of a complaint; and a timetable for the processing and determination of a complaint (Leadbitter and Ward 2003, 81).

Stakeholders began discussing solutions in early 2001, even before the hoki decision was finalized. In October 2001, the MSC adopted an initial objections procedure. It was not applied to the still-active hoki dispute and it imposed a time window of fifteen working days after the release of the final certification report in which a complaint could be lodged. Hence, older fisheries like the Western Australia rock lobster fishery, which critics alleged did not meet the MSC principles and criteria (Sutton 2003), were not eligible. In July 2002, while the hoki complaint continued, the board of trustees adopted an objections procedure for use in all subsequent assessments. Any dispute a certifier could not resolve would be referred to the board of trustees, which would establish a dispute panel chaired by a board member with no interest in the fishery. At least two “eminent scientists” were also to be appointed to advise the panel (Leadbitter and Ward 2003, 82).

Features of the 2002 objections procedure have been important for subsequent objections proceedings. One feature was an initial review by the MSC objections panel chair to determine if the objection was “patently frivolous or otherwise spurious,” in which case the objection would not be considered by an objections panel (Brown et al 2015). In a second feature, remand, the objections panel could either allow the certifier’s determination to stand or remand it to the certifier with instructions “to consider significant procedural issues or information omitted or inadequately considered in the assessment” (MSC 2002, cited in Brown et al. 2015). The certifier had to respond to the objections panel chair in full detail to the matters specified in the remand. The objections panel could then accept the certifier’s response or remand again and make a final decision. Another important requirement was that at least one objections panel member needed experience as an MSC fishery assessor or peer reviewer (Brown et al. 2015). Objectors had to pay a fee to the MSC, but it was refundable if the objection was upheld.

The 2005 adoption of the FAO guidelines for the eco-labeling of fish and fisheries products from marine capture fisheries (FAO 2005) was the next impetus for changes to the MSC’s objections procedure (Gulbrandsen 2010, 128). The FAO guidelines addressed most aspects of fisheries certification, including “resolution of complaints and appeals.” And although they were nonbinding, the guidelines did exert normative influence over the MSC to comply with their provisions in the structure of its internal accountability mechanisms.

In choosing to comply with the FAO guidelines (MSC 2006a), the MSC changed two aspects of the objections procedure (Brown et al. 2015). First, in accordance with the guidelines (section 147), the MSC specified that the objector

would pay for the objections process to a cap of £15,000, although objectors with financial constraints were eligible for exceptions. Second, the MSC made the objections procedure independent of the program (consistent with section 148), which meant that MSC could no longer have a board member as chair or member of the objections panel. Hence, the board of trustees appointed an independent adjudicator (now a roster of adjudicators) to replace the objections panel.

The next impetus for change came from the stakeholder council, which began calling for major overhauls in 2007. The board of trustees responded by instructing the MSC executive to review the objections procedure and recommend changes. In 2010, the board adopted a revised procedure that institutionalized the office of an independent adjudicator, with the adjudicator appointed by the board of trustees for a three-year period with possible renewal (MSC 2010, 4.3.1). The revised procedure clarified its role as determining “whether the certification body made an error that materially affected the outcome of its Determination;” it was not to review and rescore the subject fishery (MSC 2010, 4.2.1). However, the 2010 revisions altered the remand process such that changes to scoring could occur. The adjudicator could ask the certifier to reconsider its determination in light of the objector’s concerns. This process would then repeat until the adjudicator accepted the certifier’s changes or upheld the complaint.

As previously mentioned, the objector covers the cost of an objection process, which the MSC reports only funds the legal process, not MSC’s internal staff costs or costs to the fishery and the certifier (Brown et al. 2015). However, stakeholders and fisheries scientists maintain that these costs still pose a barrier to submitting formal appeals (Jacquet et al. 2010), in effect limiting stakeholder access to a key internal accountability mechanism. Following these critiques, in August 2010 the MSC lowered the capped cost to £5,000 (MSC 2010), and since then, about 10 percent of objectors have had the fee waived because of financial hardship (Brown et al. 2015). The procedure has remained closed to parties that did not participate in the assessment process, underscoring the point that the lines between internal and external accountability are clear.

Discussion

The evolving accountability relations surrounding the MSC highlights that key tensions can exist when there is a perceived misalignment between the goals a certification program is advancing and which actors are granted governance influence. This is particularly the case because the MSC’s activities and those of environmental groups pushing companies to change their seafood purchasing practices have been tightly intertwined. Demand for MSC certification has risen as a direct result of campaigns by groups such as Greenpeace, bolstering the significance of these groups as stakeholders for which the MSC ought to account.

However, these groups have been frequent critics of the MSC's approach to improving the state of global fisheries.

How has the MSC navigated this misalignment? Though the program could reconsider its goals to lessen the inconsistency perceived by environmental groups, it has not done so. The MSC has, on the other hand, incrementally moved towards greater inclusion, granting critical stakeholders greater access to its decision-making through the creation of the stakeholder council. Processes like the quality and consistency project also sought broad stakeholder input to improve the assessment methodology. However, reforms stopped short of wholesale governance changes. Rather than create a membership body with decision-making authority, the MSC has chosen to inform stakeholders of its activities and draw on their expertise and concerns when needed to make individual assessments credible (Auld and Gulbrandsen 2010). It has enhanced outreach to stakeholders but remains committed to its centralized and streamlined approach to governance and stakeholder involvement. Arguably this undergirds stakeholders' perception that the opportunities for voice are relatively weak. Hence, we do observe a misalignment because the MSC claims to advance fisheries sustainability but has given limited access to stakeholders (environmental organizations) that support this normative end. This misalignment is salient because of the role many environmental groups have played in fostering demand for the services the MSC performs.

In such cases greater attention arguably falls on the third solution—accountability mechanisms. The MSC has focused on enhancing the credibility of the fisheries assessment process and improving the opportunities for holding certifiers to account for certification determinations, efforts rooted in the logic of internal accountability. Indeed, telling changes to the objections procedure occurred when the FAO released its guidelines. The MSC chose to conform to these norms even though doing so clearly exacerbated tensions with external stakeholders over who should pay the costs of an objection (Howes 2006). The objections procedure has thus evolved through several revisions to become a sophisticated and institutionalized system that resembles a public regulatory regime with legal provisions for administrative review, where questions of standing (who can sue) and the degree of deference to the law-maker and implementing agency are key features affecting the performance of such accountability mechanisms (Howlett 2000).

Still, internal accountability mechanisms that adhere to the procedural norms of an effective bureaucracy and the separation of standard setting from auditing do not necessarily provide stakeholders influence over assessment outcomes. Indeed, environmental and social stakeholders have complained that fishery certifiers do not adequately address their concerns and are too attentive to the needs of the fishing industry. The significant authority delegated by MSC to the certifiers arguably comes at the expense of the ability of stakeholders to affect decisions. The assessment process is paid for by the applicant fishery, which, in the process, becomes the certifier's client. Because expert assessment

teams appointed by the certifier score applicant fisheries and determine certification outcomes, they have considerable decision-making power. However, apart from being accredited by an independent organization, certifiers and the expert assessment teams they appoint are not directly accountable to external stakeholders or to the public(s). The persistent roles and significance of these actors highlight the potentially asymmetric power relations within the MSC's community, which implies that some accountability relations are more important for the program than others (Boström 2006).

Thus, from the perspective of those outside the organization—particularly environmental groups—the calculus appears to focus on the possible negative interactions of an unaccountable nonstate certification program with other forms of governance like government regulations or direct market campaigns that target the purchasing behavior of supermarkets and retailers. The Wildhavens report documented these concerns for the Alaskan pollock fishery. More recently, seafood buyer guides published by various groups (e.g., the Monterey Bay Aquarium) and watchdog reports on the environmental performance of supermarkets (e.g., Greenpeace) often disagree with the MSC on how to evaluate the sustainability of specific fisheries (Auld and Cashore 2013). Some of these groups initially attempted to change the MSC, for example by calling on the program to not claim fisheries were sustainable, or not to grant certificates to controversial fisheries. However, they have since sought to influence fisheries using their own direct market campaigns—a form of market accountability—to ensure greater consistency with the normative ends they seek to advance.

The rationale for this move is apparent in the history of the objections procedure too. The procedure has been criticized for its expense, limited openness to stakeholder participation, and track record (Christian et al. 2013). Out of more than 300 fishery assessments (including re-assessments) by the end of 2015, the objections process has been triggered thirty-one times as a result of accepted objections from environmental groups and other stakeholders, including industry associations representing certified fisheries. Only two of the accepted objections against the thirty-one fishery assessments were upheld and the fishery's certification denied as a result—those of the Faroese Northeast Atlantic mackerel (January 2011) and the Echebstar Indian Ocean tuna fishery (November 2015) (MSC 2015a, b).

The MSC claims these critiques misunderstand the procedure's aims (Gutierrez and Agnew 2013; Brown et al. 2015). The independent adjudicator must consider whether the certifier made a serious procedural error or arbitrary or unreasonable scoring decision based on the evidence available to it; the process is not designed to re-score the fishery, but it can and does often identify and require fisheries to implement further improvements to their practices in order to become certified. However, some stakeholders find it hard to accept that a procedure-examination process would not be required to sometimes provide for a *de novo* review. This is one reason why certain groups want the objection procedure to include the option for a full reassessment. Despite such calls, the

MSC has not acquiesced, maintaining that the purpose of the objection procedure is to provide a review process that is consistent with the standard of appellate review of administrative decisions in most countries and with complaints procedures in other certification programs (Brown et al. 2015). As a consequence, however, some environmental groups that initially supported the MSC have dismissed the program and turned to other market accountability mechanisms to advance their normative ends. For these stakeholders, the MSC's objections procedure only serves to enhance internal accountability to a process, not external accountability for the content of decisions or to stakeholders who share MSC's goal of fisheries sustainability.

Conclusions

Just as Keohane (2003) argued in the case of international organizations, we maintain that accountability in private governance is informed by logics of internal and external accountability. Emerging nonstate certification programs have the added challenge of operating with poorly delineated and often contested boundaries of their audiences. Accounting for these boundaries clarifies the contestation between internal and external accountability that occurs as certification programs determine what goals to advance and which actors to give access to their internal governance processes.

We have observed a misalignment because the MSC claims to advance fisheries sustainability but has given limited access to environmental groups that feel they too are advancing this end. The misalignment is particularly salient, moreover, because these environmental groups, through their naming-and-shaming campaigns, have materially helped the MSC by engendering demand for certified seafood. However, rather than fully open its governance processes to environmental groups, the MSC has attempted to resolve the misalignment problem by bolstering internal accountability mechanisms like the fisheries assessment methodology and the program's objections procedure. In this way, the program has staked its reputation more on the alignment of its procedures with the norms of bureaucratic expertise. These efforts resulted in advanced accountability mechanisms that resemble public sector mechanisms central in administrative law—monitoring, reporting and verification, enforcement, adjudication, and dispute resolution (cf. Meidinger 2006).

This approach has come with costs. We have observed that elaborate internal accountability mechanisms do not necessarily provide stakeholders with influence over fisheries assessments, as the process is based on expert evaluation of stakeholder input, not a stakeholder negotiation process. NGOs and other stakeholders can appeal certification decisions, but objections are costly and rarely lead to certification denial. The question thus remains whether the objections procedure has value for those who believe that because of inflated scores, loose interpretation of MSC's criteria, and great flexibility in scoring by expert assessment teams, the MSC certifies many controversial and

unsustainable fisheries. This is a critical question because the objections procedure is the only way stakeholders can directly hold certifiers to account for scoring of fisheries and decisions.

When considering external accountability, some observers argue that the MSC has chosen a path that could undermine credibility and trust in the program unless it changes its goals or grants environmental groups more influence. Others have called on the program to drop the use of sustainability as a claim, or to explain to consumers what aspects of sustainability MSC certification does not cover. Such calls have thus far met with little success. Thus, some environmental groups have distanced themselves from the program and sought to advance fisheries sustainability through their own direct market accountability mechanisms such as seafood buyer guides. They also appear to assess the MSC more in relation to governance mechanisms such as fisheries regulations and court cases, to minimize negative impacts the MSC could have on other actions addressing fisheries sustainability.

In nonstate certification, problems of inclusion and exclusion may arise out of difficulties in establishing the boundaries of external communities, that is, determining to whom the certification program ought to be accountable. Private governors may also use inclusion and exclusion instrumentally to ensure desired outcomes in rulemaking processes. Such strategies may have unforeseen consequences, however. This study shows that a narrowing of participation in one venue can lead excluded stakeholders to pursue other mechanisms to seek accountability. Hence, it is critical to recognize the interdependence of decisions about how, to whom, and against what norms certification programs are held to account. When a program does not address misalignment or inconsistency by changing its goals or normative principles or by granting actors greater influence over the program, those actors are likely to engage in rival processes to hold the program accountable and to pursue their objectives. Examining such dynamics is a key area for future research on the accountability of private governance, not only in the case of fisheries certification but also for a wide range of market-based sustainability certification programs.

References

- Abbott, Kenneth W., and Duncan Snidal. 2009. Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit. *Vanderbilt Journal of Transnational Law* 42: 501–578.
- Akhtar, Sandra. Environmental and fishing groups unite to push new fishery bill. *States News Service*, July 23, 1996.
- Auld, Graeme. 2014. *Constructing Private Governance: The Rise and Evolution of Forest, Coffee, and Fisheries Certification*. New Haven, CT: Yale University Press.
- Auld, Graeme, and Benjamin Cashore. 2013. Mixed Signals: NGO Campaigns and NSMD Governance in an Export-Oriented Country. *Canadian Public Policy-Analyse De Politiques* 39 (S2): 143–156.

- Auld, Graeme, and Lars H. Gulbrandsen. 2010. Transparency in Nonstate Certification: Consequences for Accountability and Legitimacy. *Global Environmental Politics* 10 (3): 97–119.
- Auld, Graeme, Stefan Renckens, and Benjamin Cashore. 2015. Transnational Private Governance between the Logics of Empowerment and Control. *Regulation & Governance* 9 (2): 108–124.
- Bäckstrand, Karin. 2008. Accountability of Networked Climate Governance: The Rise of Transnational Climate Partnerships. *Global Environmental Politics* 8 (3): 74–102.
- Bartley, Tim, and Shawna N. Smith. 2010. Communities of Practice as Cause and Consequence of Transnational Governance. In *Transnational Communities: Shaping Global Economic Governance*, edited by Marie-Laure Djelic and Sigrid Quack, 334–373. Cambridge: Cambridge University Press.
- Bernstein, Steven, and Benjamin Cashore. 2007. Can Nonstate Global Governance Be Legitimate? An Analytical Framework. *Regulation & Governance* 1 (4): 347–371.
- Boström, Magnus. 2006. Regulatory Credibility and Authority through Inclusiveness: Standardization Organizations in Cases of Eco-Labeling. *Organization* 13 (3): 345–367.
- Brown, Simon, David J. Agnew, and Will Martin. 2015. On the Road to Fisheries Certification: The Value of the Objections Procedure in Achieving the MSC Sustainability Standard. *Fisheries Research*. <http://dx.doi.org/10.1016/j.fishres.2015.10.015>
- Büthe, Tim. 2012. Beyond Supply and Demand: A Political-Economy Conceptual Model. In *Governance by Indicators: Global Power through Quantification and Rankings*, edited by Kevin E. Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry, 29–51. Oxford, UK: Oxford University Press.
- Cashore, Benjamin. 2002. Legitimacy and the Privatization of Environmental Governance: How Nonstate Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority. *Governance* 15 (4): 503–529.
- Cashore, Benjamin, Graeme Auld, and Deanna Newsom. 2004. *Governing Through Markets: Forest Certification and the Emergence of Nonstate Authority*. New Haven: Yale University Press.
- Christian, Claire, David Ainley, Megan Bailey, Paul Dayton, John Hocevar, Michael LeVine, Jordan Nikoloyuk, Claire Nouvian, Enriqueta Velarde, and Rodolfo Werner. 2013. A Review of Formal Objections to Marine Stewardship Council Fisheries Certifications. *Biological Conservation* 161: 10–17.
- FAO. 2005. Guidelines for the Eco-labelling of Fish and Fisheries Products from Marine Capture Fisheries. Rome, Italy: FAO.
- Fowler, Penny, and Simon Heap. 2000. Bridging Troubled Waters: The Marine Stewardship Council. In *Terms of Endearment: Business, NGOs, and Sustainable Development*, edited by Jem Bendell, 135–148. Sheffield, UK: Greenleaf Publishing.
- Fransen, L. W., and A. Kolk. 2007. Global Rule-Setting for Business: A Critical Analysis of Multi-Stakeholder Standards. *Organization* 14 (5): 667–684.
- Fransen, Luc, Jelmer Schalk, and Graeme Auld. 2016. Work Ties Beget Community? Assessing Interactions Among Transnational Private Governance Organizations in Sustainable Agriculture. *Global Networks* 16 (1): 45–67.
- Gibson, Robert B. 2012. In Full Retreat: the Canadian Government's New Environmental Assessment Law Undoes Decades of Progress. *Impact Assessment and Project Appraisal* 30 (3): 179–188.
- Grant, Ruth W., and Robert O. Keohane. 2005. Accountability and Abuses of Power in World Politics. *American Political Science Review* 99 (01): 29–43.

- Grieve, Chris. 2005. Memo to MSC Certification Bodies, Fisheries Clients and Stakeholders. London, UK: Marine Stewardship Council.
- Gulbrandsen, Lars H. 2008. Accountability Arrangements in Nonstate Standards Organizations: Instrumental Design and Imitation. *Organization* 15 (4): 563–583.
- Gulbrandsen, Lars H. 2010. *Transnational Environmental Governance: The Emergence and Effects of the Certification of Forests and Fisheries*. Cheltenham and Northampton: Edward Elgar.
- Gutierrez, Nicolas L., and David J. Agnew. 2013. MSC Objection Process Improves Fishery Certification Assessments: A Comment to Christian et al (2013). *Biological Conservation* 165: 212–213.
- Highlyman, Scott, Amy Mathews Amos, and Hank Cauley. 2004. An Independent Assessment of the Marine Stewardship Council. Wildhavens.
- Howes, Rupert. 2006. Personal interview with MSC Executive Director Rupert Howes by Lars H. Gulbrandsen, London, May 23 (on file with author).
- Howlett, Michael. 2000. Beyond Legalism? Policy Ideas, Implementation Styles and Emulation-Based Convergence in Canadian and U.S. Environmental Policy. *Journal of Public Policy* 20 (3): 305–329.
- Jacquet, Jennifer, Daniel Pauly, David Ainley, Sidney Holt, Paul Dayton, and Jeremy Jackson. 2010. Seafood Stewardship in Crisis. *Nature* 467 (2 September): 28–29.
- Keohane, Robert O. 2003. Global Governance and Democratic Accountability. In *Taming Globalization: Frontiers of Governance*, edited by David Held and Mathias Koenig-Archibugi, 130–159. Cambridge, UK: Polity.
- Leadbitter, Duncan, and Trevor Ward. 2003. Dispute Resolution and the MSC. In *Eco-Labeling in Fisheries: What Is It All About?*, edited by Bruce Phillips, Trevor Ward and Chet Chaffee, 80–85. Oxford, UK: Blackwell.
- Mattli, Walter, and Tim Büthe. 2005. Global Private Governance: Lessons from a National Model of Setting Standards in Accounting. *Law and Contemporary Problems* 68 (3/4): 225–262.
- Meidinger, Errol. 2006. The Administrative Law of Global Private-Public Regulation: The Case of Forestry. *European Journal of International Law* 17 (1): 47–87.
- MSC. 2002. MSC Objections Procedure, London, UK: Marine Stewardship Council. (Superseded document, no longer available at MSC website).
- MSC. 2004a. Special Joint Session of the Stakeholder Council and the Technical Advisory Board—The MSC Claim of Sustainability. London, UK: Marine Stewardship Council.
- MSC. 2004b. Summary of MSC Board Meeting, London, UK: Marine Stewardship Council. On file with authors.
- MSC. 2005a. Improving Application of the Principles and Criteria for Sustainable Fishing: The Quality and Consistency Project—A Cornerstone of MSC’s ‘Reform Agenda’. London, UK: Marine Stewardship Council.
- MSC. 2005b. Technical Advisory Board—Public Summary—Meeting No. 7, 6–7 June 2005. London, UK: Marine Stewardship Council.
- MSC. 2006a. Leader in Fishery Certification and Eco-labelling Announces 100% Consistency with UN Guidelines. London, UK: Marine Stewardship Council.
- MSC. 2006b. MSC Quality and Consistency Project—Phase 1—Intent of MSC’s Criteria Workshop Participant List. London, UK: Marine Stewardship Council.
- MSC. 2006c. The Quality and Consistency Project—Regional Workshops. London, UK: Marine Stewardship Council.

- MSC. 2008. Marine Stewardship Council Fisheries Assessment Methodology and Guidance to Certification Bodies. London, UK: Marine Stewardship Council.
- MSC. 2009. Annual Report 2008 / 09. London, UK: Marine Stewardship Council.
- MSC. 2010. TAB Directive 023: Revised Fisheries Certification Methodology Objections Procedure. London, UK: Marine Stewardship Council.
- MSC. 2015a. *Final determination on Echebatar Indian Ocean tuna fishery*. Marine Stewardship Council. Available at <https://www.msc.org/newsroom/news/final-determination-on-echebatar-indian-ocean-tuna-fishery?fromsearch=1&isnewssearch=1>, last accessed December 23, 2015.
- MSC. 2015b. Global Impacts Report Metadata (2015 Edition). London, UK: Marine Stewardship Council.
- Mulgan, Richard. 2000. 'Accountability': An Ever-Expanding Concept? *Public Administration* 78 (3): 555–573.
- Oliver, Christine. 1991. Strategic Responses to Institutional Processes. *Academy of Management Review* 16 (1): 145–179.
- Romzek, Barbara S., and Melvin J. Dubnick. 1987. Accountability in the Public Sector: Lessons from the Challenger Tragedy. *Public Administration Review* 47 (May/June): 227–238.
- Rosenau, James N. 2000. Change, Complexity, and Governance in Globalizing space. In *Debating Governance: Authority, Steering, and Democracy*, edited by J. Pierre, 167–200. Oxford, UK: Oxford University Press.
- Rosenberg, Andrew A., Jill H. Swasey, and Margaret Bowman. 2006. Rebuilding US Fisheries: Progress and Problems. *Frontiers in Ecology and the Environment* 4 (6): 303–308.
- Sutton, David. 2003. An Unsatisfactory Encounter with the MSC—a Conservation Perspective. In *Eco-Labeling in Fisheries: What Is It All About?* edited by Bruce Phillips, Trevor Ward and Chet Chaffee, 114–119. Oxford: Blackwell Publishing.
- Sutton, Michael. 1998. Marine Stewardship Council: An Appeal for Co-operation. *SAMUDRA* (19).